



Kentucky Law Journal

Volume 107 | Issue 4

Article 8

2019

When Nowhere Becomes Somewhere: Gentrification in Rural Communities and How Proactive Community Planning and a Progressive Property Valuation System Can Stem the Tide

Mat Payne
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Property Law and Real Estate Commons](#)

[Right click to open a feedback form in a new tab to let us know how this document benefits you.](#)

Recommended Citation

Payne, Mat (2019) "When Nowhere Becomes Somewhere: Gentrification in Rural Communities and How Proactive Community Planning and a Progressive Property Valuation System Can Stem the Tide," *Kentucky Law Journal*: Vol. 107 : Iss. 4 , Article 8.
Available at: <https://uknowledge.uky.edu/klj/vol107/iss4/8>

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

WHEN NOWHERE BECOMES SOMEWHERE: GENTRIFICATION
IN RURAL COMMUNITIES AND HOW PROACTIVE COMMUNITY
PLANNING AND A PROGRESSIVE PROPERTY VALUATION
SYSTEM CAN STEM THE TIDE

Mat Payne¹

TABLE OF CONTENTS

TABLE OF CONTENTS.....727

INTRODUCTION728

I. RURAL GENTRIFICATION: A DEFINITION 729

II. SELLING THE FARM AND GREETING THE DEVELOPERS: GENTRIFICATION
AS A DRIVER OF CULTURAL ERASURE AND THE LOSS OF
SELF DETERMINATION.....731

III. MY LAND IS WORTH WHAT? 736

IV. PLANNING FOR A SUSTAINABLE FUTURE RATHER THAN FOR A PRESENT
THAT CANNOT POSSIBLY EXIST.....738

CONCLUSION.....743

¹ B.A. 2012, Wake Forest University, J.D. Candidate 2019, University of Kentucky College of Law. I would like to thank my wife, Amaya, for her unwavering support throughout this process, for smiling and nodding while I blabber on using unnecessary legal jargon to talk about concepts I barely understand, and for giving me the reason I needed to try just a little harder in everything I do.

INTRODUCTION

Two houses built on top of opposing mountains look out over the valley floor below. From the back porch of their three-story vacation home, the easterly facing neighbor looks to her partner and with disdain says "If those houses had been there when we were looking for a second home, I would have never agreed to this one. They've ruined our view." At the same time, the westerly facing neighbor glances up from her computer to look at the row upon row of cookie-cutter mansions on the opposing mountain before hitting send on an email to the realtor who sold her the home, requesting it be put back on the market because "The town is just too developed. The spirit that initially attracted me to this place is gone." Meanwhile in the valley below, a fifth-generation resident sits at his kitchen table in a double-wide trailer, silently staring at his property tax bill and wondering how he could have been deemed so land rich while remaining cash poor. At the end of his rope, he stares out at the mountains, at all the homes he will never be able to afford, and at the defiled mountainside that had once called his family to settle the area. "That's it," he says. "I can't do this anymore. You can have it." Another house for sale.

Though anecdotal, the scene above represents an increasingly common experience in rural communities across the world, where long-term residents are priced out of their homes due to cultural and economic changes that culminate in a rapidly increasing tax burden paired with a loss of cultural identity.² This phenomenon is colloquially known as gentrification and has been thought to generally take the form of middle and upper-class individual's obtaining property in historically working-class neighborhoods and injecting them with enough capital to effectively push the lower-class out.³ This definition suffices for conversational purposes and generalities, however, the effects of gentrification are experienced differently in rural and urban communities, causing distinctions between the two to become necessary to fully understand the experience of both groups.⁴

This Note will attempt to detail what rural communities stand to lose to gentrification, and will argue that proactive legislative action, on the local and state level, is necessary for the interests of all parties to be satisfied. Part I will attempt to define "rural gentrification" as a legal concept utilizing a variety of scholarly research from the field of geography and incorporating it into a workable legal definition. Part II will analyze the societal consequences of gentrification as they relate to the need for corrective legislative action and the circumstances that lead to a community recognizing this need as well as its constitutional basis as a legitimate cause for the exercise of government power. Part III will examine systems of property valuation as they relate to taxes and will weigh the potential positive effects that the widespread adoption of a "value acquired" assessment system of tax-parcel valuation could have on those affected by the rapid increase in property value. Part

² See Martin Phillips, *Rural Gentrification and the Processes of Class Colonisation*, 9 J. OF RURAL STUD. 123 (1993).

³ See *id.* at 124.

⁴ *Id.* at 124-28.

IV will look at a variety of land use regulations that have been implemented in gentrifying communities, the economic consequences to both new and original residents as well as the preservation of community self-determination. Finally, this Note will argue that proactive planning and a protective regime of property assessment and taxation could be implemented in a way that balances the need for economic growth while protecting an area's lower-class residents from experiencing the effects of gentrification in the rural setting.

I. RURAL GENTRIFICATION: A DEFINITION

The cultural and economic action of gentrifying a space occurs within the sphere of legally permissible actions and is the physical embodiment of one class' evolving opinion of and re-valuation of the area.⁵ As such, the process of gentrification has escaped being classified under a singular definition that can be universally recognized within the legal community. Historically, gentrification as a cultural phenomenon has been approached from a geographical perspective, largely influencing policy decisions and its interpretation within the available legal scholarship.⁶ To most effectively address gentrification as a social condition worthy of being factored into related policy and judicial decision making, a workable definition must be established.

Gentrification has been broadly defined in statistical terms as "an increase in the proportion of settlement population in socio-economic groups I and II; with a figure of 40.0 percent indicative of a significant degree of gentrification."⁷ Community planners have acknowledged the disparity between the wants and needs of the differing socio-economic groups and have viewed the impasse created by the overall failure between community factions to come together on a vision of shared community development as the defining characteristic of gentrification.⁸ In other words: the inability to create a plan that benefits all groups equally.⁹

A more commonsense definition of gentrification has been adopted by geographers as "the replacement of a working-class population by a middle-class one."¹⁰ The mechanics of gentrification are not limited to these specific classes but are representative of the needed degree of difference in economic mobility and of class between the two groups.¹¹ A similarly broad definition of gentrification has long been utilized by the U.S. Department of Housing and Urban Affairs, defining gentrification as a "form of neighborhood change that occurs when higher-income

⁵ See *Gentrification*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/gentrification> [<https://perma.cc/85WH-BQTN>].

⁶ See *id.*; MICHAEL PACIONE, *RURAL GEOGRAPHY* 175 (1984).

⁷ *Id.*

⁸ See Daphne Spain, *Been-Heres versus Come-Heres Negotiating Conflicting Community Identities*, 59 J. OF AM. PLAN. ASS'N 156, 157 (1993).

⁹ *Id.*

¹⁰ Phillips, *supra* note 2, at 124.

¹¹ See *id.*

groups move into low-income areas, potentially altering the cultural and financial landscape of the original neighborhood.”¹²

Because rural gentrification is a variation on its urban form, the nuance relating to one locality is inapplicable to the other. Much of the scholarship on rural gentrification has been done with a local focus on the gentrifying countryside in the United Kingdom, however there are many similarities that can be drawn between those in the United States and the U.K.¹³ Within this context, scholars in the field of geography have differentiated rural gentrification from its urban counterpart by identifying three primary factors.¹⁴

The first of these factors is the “manifestation of the uneven circulation of capital” within an area.¹⁵ The gentrifiers serve a dual role that balances both their interests as an individual property owner and single-economic actor as well as their interests as a player in a broad cultural reimagination of the way space is utilized and of the dominant culture of an area.¹⁶ This dual role is referred to as an “occupier developer”¹⁷ With the influx of capital into a community, a new local economy naturally takes shape as a response to the demand created by the developer-owners.

The composition of such new economies serves as the second factor, inasmuch as they signal that the gentrifiers are a force that “reduce[s] reproductive labor.”¹⁸ This change can be illustrated through a shift from traditional agricultural occupational structures to those that focus on service occupations designed to cater to the amenity driven market.¹⁹

The final factor defining rural gentrification is the desire of the new population to “buy into” a version of the rural idyllic lifestyle that the new residents perceive to exist.²⁰ The perception held by developer-owners, regardless of its basis in reality, is a powerful driver behind gentrification and the resulting development of the new rural economy, which will be addressed later in this note.

Gentrification of an area is not by definition the intentional replacement of one social group with another, motivation for relocation to areas populated with residents in a lower socio-economic class can be driven by necessity as well as desire to adopt a perceived lifestyle.²¹ Because real estate prices and rental rates are on average less in lower economic areas, developers are incentivized to invest in such areas as the

¹² U.S. DEPT. OF HOUSING AND URB. DEV. OFF. OF POL’Y DEV. & RES, ENSURING EQUITABLE NEIGHBORHOOD CHANGE: GENTRIFICATION PRESSURES ON HOUSING AFFORDABILITY 1 (2016), <https://www.huduser.gov/portal/sites/default/files/pdf/Insights-Ensuring-Equitable-Growth.pdf> [<https://perma.cc/R68H-5NMR>].

¹³ Eliza Darling, *The City in the Country: Wilderness Gentrification and the Rent Gap*, 37 ENV’T & PLAN. 1015, 1016–17 (2005).

¹⁴ Phillips, *supra* note 2, at 138.

¹⁵ *Id.*

¹⁶ *See id.*

¹⁷ *Id.* at 125.

¹⁸ *Id.*

¹⁹ *See id.* at 129–30

²⁰ *Id.* at 125, 127.

²¹ *Id.* at 125, 130.

need for middle class housing increases.²² Through this investment, developers renovate or build new housing stock in such areas in order to attract middle or upper class residents from other communities who are willing and able to pay higher rates than would have been possible to collect from the community's historic tenants.²³ Geographer Neil Smith defined the motivation behind such developer actions as the "rent-gap theory," and places the onus of gentrification on developers rather than developer-owners.²⁴ This theory can be illustrated in the rural setting through the disparity of the potential income that a property could generate through its cultivation for agricultural practices compared to its potential to generate revenue as a developed property.²⁵

Because no one definition of rural gentrification has been recognized within the legal community, this Note advocates that state and local governments adopt a definition that encompasses the various forms that gentrification may take within the rural context. An example of such a definition that encompasses the factors discussed above could be: the change in the community's socio-economic makeup from one reliant on the extraction of value from property in its natural or trade-related usage by people of a lower class to one that values property for its developed potential that would be utilized by new, middle or upper-class residents and the tangential businesses designed to cater to the set of wants and needs of the new population. Though there may be room for it to be improved, this definition draws from the multi-disciplinary scholarship on gentrification and presents a sufficient number of factors that could be used in a legal setting to argue whether a community is or is not undergoing gentrification.

II. SELLING THE FARM AND GREETING THE DEVELOPERS: GENTRIFICATION AS A DRIVER OF CULTURAL ERASURE AND THE LOSS OF SELF-DETERMINATION.

As an area slowly undergoes the process of gentrification, the cultural backbone that previously existed is replaced by an evolving set of values and perceptions over the use of land and sense of community.²⁶ With the influx of new residents moving into a community in pursuit of traits they view as desirable or authentic, they reshape the community's definition of self within its collective memory.²⁷ This phenomenon, much like gentrification is referred to as cultural erasure.²⁸ "Erasure is a metaphor

²² See Thomas Rowley, *Development by Design: Land Use Planning and Regulation in Rural Communities*, Contractor Paper 01-01 (2001), <https://www.uky.edu/Ag/AgEcon/pubs/tva-Rowley01-01.pdf> [<https://perma.cc/UZQ5-LT95>].

²³ See *id.*

²⁴ See Neil Smith, *Gentrification and the Rent Gap*, 77-3 ANN. OF THE ASS'N OF AM. GEOGRAPHERS 462, 463–64 (1987).

²⁵ Rowley, *supra* note 22, at 5.

²⁶ Jerrold A. Long, *Private Lands, Conflict, and Institutional Evolution in the Post-Public-Lands West*, 28 PACE ENVTL. L. REV. 670, 672–74 (2011).

²⁷ David Rotenstein, *Farm Road: Rural Gentrification and the Erasure of History*, NAT'L COUNCIL ON PUB. HIST. (July 13, 2016), <http://ncph.org/history-at-work/farm-road-rural-gentrification-and-the-erasure-of-history> [<https://perma.cc/PR7L-JRCT>].

²⁸ *Id.*

historians and anthropologists use to describe the replacement of one historical narrative by another.”²⁹ The physical displacement inherent to gentrification can be likened to the historical revisionism that erasure embodies: “It is a complicated process that combines ‘forgetting’ with historical revisionism to privilege a particular group promoting the new narrative.”³⁰ The community’s evolving identity and narrative will be formed differently depending on the motivation for relocation that drives new residents to the area and the mindset they approach their entrance into the community with.³¹

The two groups of new residents that this Note contemplates are gentrifiers and social preservationists.³² Though both groups enter new communities and develop property, the differentiating characteristic between the two is that gentrifiers develop properties and utilize spaces in ways that allow them to live a divergent lifestyle than that of the original residents.³³ Conversely, social preservationists seek to integrate themselves into the community as they perceive it to exist.³⁴ Social preservationists differ from gentrifiers in their intent to identify traits within the community that they believe to be authentic and to actively work to preserve them.³⁵ Though well meaning, the social preservationist places such high value upon the preservation of the authentic “old-timers” and the culture that surrounds them that they inadvertently devalue other residents who may have equally strong ties to the land but have chosen to pursue other economic, social, and cultural opportunities than those the social preservationist identifies as “authentic” to the community.³⁶ As one generation of identified “old-timers” dies off, symbolic representations of their authenticity begin to creep into both the visual and cultural identity of the community.³⁷ These representations are often the result of social preservationists’ effort to enshrine the community in its most “authentic” state, as it was defined by them.³⁸ The purpose of identifying these groups is not to place one on a higher ethical ground than the other, but to emphasize the significance of intention and the commonalities that occur when either group is involved. “The social preservationist, whose quest for residence in a socially preserved locale is rooted in the search for authentic community (embodied by the imagined ‘sameness’ of old-timers), avoids the formation of community based on the sameness of newcomers.”³⁹

The social preservationist’s drive to preserve the perceived authentic lifestyle dilutes the ability of original residents to determine their community’s future and

²⁹ *Id.*

³⁰ *Id.*

³¹ See Japonica Brown-Saracino, *Virtuous Marginality: Social Preservationists and the Selection of the Old-Timer*, 36-5 J. THEORY SOC. 437, 442 (2007).

³² *Id.* at 439.

³³ *Id.* at 442.

³⁴ *Id.* at 443, 458.

³⁵ *Id.* at 443.

³⁶ *Id.*

³⁷ *Id.* at 458.

³⁸ *Id.*

³⁹ JAPONICA BROWN-SARACINO, *THE GENTRIFICATION DEBATES* 272 (2010).

identity.⁴⁰ Within the context of rural communities, this shift can be witnessed in the evolution of the community's land use doctrine, most often as a reaction to behavior that is deemed to be undesirable.⁴¹ As these values and the residential demographics shift away from long-time residents, the culture and heritage that was once a part of the area is slowly erased and the communal memory of the place is reshaped in the form that new residents desire.⁴² Inherent in such an erasure is the alteration of the area's historical narrative.⁴³ This has been deemed to be a version of historical revisionism that strays further from an accurate description.⁴⁴ For the purposes of this Note, cultural erasure by gentrifiers and social preservationists shall both fall under broad umbrella of gentrification.

Local governments may not be initially concerned about the effects of gentrification as a cause of residential displacement because the increased amount of capital pumped into an area has a positive effect on government's ability to operate and often comes with an image of revitalization that may further attract new community investors.⁴⁵ From a governmental standpoint, approaching gentrification as a negative effect of revitalization can risk alienating one group of residents or the other and unequally distributing political power, frustrating a community's ability to create a shared vision of its future.⁴⁶

When viewed through an economic lens, gentrification can be considered a natural occurrence within a community's evolution that allows individuals with property interests to maximize their interests.⁴⁷ The right of the property owner to unilaterally decide how their property will be developed or disposed of, within the constraints of the law, is enshrined in the legal recognition of private-property.⁴⁸ The benefit of legal recognition of private property and the corresponding degree of autonomy associated with it are generally believed to be crucial to the successful preservation of a liberal-democracy⁴⁹ and as a means of avoiding the tragedy of the commons.⁵⁰ This view of a property being utilized in the most productive form is consistent with classic economic theory.⁵¹ From the legal perspective, and that of many property scholars, a leaseholder only has an interest in the property, and by

⁴⁰ Brown-Saracino, *supra* note 31 at 442.

⁴¹ Long, *supra* note 26, at 672–74.

⁴² Rotenstein, *supra* note 27.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Christopher Serkin & Gregg P. Macey, *Post-Zoning: Alternative Forms of Public Land Use Controls*, 78 BROOK. L. REV. 305, 311 (2013).

⁴⁶ *See id.*

⁴⁷ Rachel D. Godsil, *The Gentrification Trigger: Autonomy, Mobility, and Affirmatively Furthering Fair Housing*, 78 BROOK. L. REV. 319, 320–21 (2013).

⁴⁸ *See id.*

⁴⁹ *Id.* at 321.

⁵⁰ *Id.* at 322. The “tragedy of the commons” as developed by Garrett Hardin, is theory that when a population shares access to a finite resource, self-interested actors will maximize their consumption of said resource to the detriment of the rest of the community. Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1244 (1968).

⁵¹ *See* ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, 61–63 (1776) (describing how supply will eventually be matched by a change in demand).

extension, its possible utilization within the community as a whole, for the period of the lease, whereas the party who holds title to the property in fee simple holds the permanent interest in its future use.⁵² Accepting this view deprives a large portion of the population, namely those that live in rental properties, the agency and dignity of self-determination to exert their influence to shape the future of the communities in which they live.

Tension between the interests of a landowner and their lessee may be commonly associated with urban areas, however, it is an issue that affects rural communities, albeit at a lesser rate.⁵³ The rate of homeownership in rural communities is significantly higher than that in urban communities, 81.1 percent compared to 59.8 percent.⁵⁴ The economic difference between homeowners and renters in rural communities is significant, with rural homeowners having a median household income of \$49,141 and renters bringing in \$25,833.⁵⁵ Nearly one-third of rural and small-town renters live below the poverty line and more than 47 percent of rural renters pay more than half of their monthly income toward housing costs.⁵⁶ The housing stock available for rural renters is limited and as a result, the high demand for rental property allows for landlords to offer lower-quality units than would be possible in a more competitive market, making rural renters twice as likely to live in substandard housing than rural homeowners.⁵⁷

Conflicts between the interest of a landlord and that of their lessee over the use of the leased property in a gentrifying area result in a simplistic dichotomy of choices for a landowner: either to sell for a higher price than would have previously been obtainable or to maintain control of the property in a less productive manner as a rental property.

Where this view champions the use of property for the most productive means for the individual owner without regard for the rest of the community, scholars have advanced policy arguments that a community has an interest in how private property within its boundaries is utilized.⁵⁸ For roughly the last 100 years, this theory has served as the cornerstone of American land use law, specifically, through the use of zoning codes.⁵⁹

Simply described, zoning codes are ordinances that prohibit land owners from using their property for prohibited purposes or from building structures that do not conform to required specifications within a designated “zone.”⁶⁰ The need for such

⁵² Godsil, *supra* note 47, at 321.

⁵³ See Christopher Mazur, *Homes on the Range: Homeownership Rates Are Higher in Rural America*, U.S. CENSUS BUREAU: CENSUS BLOGS (Dec. 08, 2016), https://www.census.gov/newsroom/blogs/random-samplings/2016/12/homes_on_the_range.html [<https://perma.cc/Q7RT-VRFT>].

⁵⁴ *Id.*

⁵⁵ *Housing in Rural America*, RURAL HOME, http://www.ruralhome.org/storage/documents/ts2010/ts-report/ts10_rural_housing.pdf [<https://perma.cc/347G-3D96>].

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Godsil, *supra* note 47.

⁵⁹ See Amanda Erickson, *The Birth of Zoning Codes, a History*, CITY LAB, (June 19, 2012), <https://www.citylab.com/equity/2012/06/birth-zoning-codes-history/2275> [<https://perma.cc/S5JF-297B>].

⁶⁰ *Id.*

regulation has no singularly identifiable place of origin; instead, it arose from the changing nature of municipal life during the late 19th and early 20th Centuries.⁶¹ These regulations were initially imposed to protect the rights of property owners from the over development of urban areas, namely from the imposition that the skyscrapers of the era created by blocking sunlight to neighboring properties.⁶² The zoning phenomenon soon made its way from the city to the suburbs as a response to a growing industrial presence outside of the urban environment.⁶³ The rise of the heavy truck in the early 20th century freed the industry from the confines of a close proximity to the railroads on which they relied to transport their products and allowed for industry to take advantage of cheaper real estate offerings further away from traditional industrial centers.⁶⁴

It was against this background that the Supreme Court of the United States affirmed the constitutionality of zoning codes through its 6-3 decision in *Village of Euclid, Ohio v. Ambler Realty Company*.⁶⁵ Acknowledging the inherent imposition of government interference with private property rights, Justice Sutherland writing for the majority asserted that zoning regulations must be based on the police powers of the several states.⁶⁶ “[B]efore the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”⁶⁷

Gentrification, affects communities in a plethora of ways, however, this Note argues that this phenomenon can appropriately be regulated as being substantially related to the general welfare. Certain regions of the country feel the effects of gentrification in a somewhat uniform way. Appalachia, like much of the rest of the world, is adapting to changing the nature of work and causing the region’s unique culture, that has largely been built around isolation and the relationship with the land, to be absorbed into a broader national/international identity.⁶⁸ The current structure of gentrification being experienced in Appalachia is far from new and could be viewed as an evolution in the national mentality that has treated the region as a domestic colony, from which desirable amenities can be derived.⁶⁹ One such example of amenity driven gentrification is Asheville, North Carolina.⁷⁰ According

⁶¹ *Id.*

⁶² *Id.*

⁶³ *See id.*

⁶⁴ William A. Fischel, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 URB. STUD. 317, 321 (2004).

⁶⁵ 272 U.S. 365, 397 (1926).

⁶⁶ *Id.* at 387.

⁶⁷ *Id.* at 395.

⁶⁸ *See generally* ELIOT WIGGINTON, *THE FOXFIRE BOOK: HOG DRESSING; LOG CABIN BUILDING; MOUNTAIN CRAFTS AND FOODS; PLANTING BY THE SIGNS; SNAKE LORE, HUNTING TALES, FAITH HEALING; MOONSHINING; AND OTHER AFFAIRS OF PLAIN LIVING* (Eliot Wigginton ed. 1972) (describing activities like log cabin building in an effort to record, preserve, and share the folk culture of Appalachia with the world).

⁶⁹ *See generally* HELEN MATTHEWS LEWIS ET AL., *COLONIALISM IN MODERN AMERICA: THE APPALACHIAN CASE* (1978) (examining the economic and social problems in Appalachia).

⁷⁰ John Boyle, *Asheville Gentrification Pace Makes Top 10 List*, CITIZEN TIMES (Jan. 24, 2017, 5:41 PM), <https://www.citizen-times.com/story/news/local/2017/01/24/asheville-gentrification-pace-makes-top-10>

to the Asheville Citizen-Times, the average home price jumped from \$125,000 to \$235,000 between 2000 and 2015.⁷¹ According to Realtor.com, it has hit 50 percent of its gentrification potential.⁷² Though Asheville is not rural, surrounding communities within Buncombe County experience the spillover from its growth and the increased cost of living.⁷³ The consumption of aesthetic beauty inherent in much of the tourism and growth surrounding Asheville is attributable to wealthy, non-native individuals who have effectively altered the community's historic character and land use practices.⁷⁴ The growing prominence of high-cost housing stock relative to the percentage of residents being able to afford such houses paired with the destruction of previously undeveloped forest land is a visual testament to such changes.⁷⁵

III. MY LAND IS WORTH WHAT?

As an area undergoes the development process and capital is injected into its component properties, the fair market value of said properties will increase as the community as a whole becomes a more desirable place to live. Based on the system of assessing and taxing property in many states, including Kentucky, an individual's tax bill can vary from year to year as the assessed value of their home changes. The extent of said change hinges on the method in which the state assesses property values. In rapidly gentrifying areas, these bills can skyrocket, giving rise to questions of whether property tax burdens can promote the displacement of low-income property owners while also affecting rental rates to a degree that causes displacement.⁷⁶

The process of determining a property owner's tax bill varies from state to state but is typically handled at the local level.⁷⁷ In Kentucky, a landowner's property value is determined by the county's property valuation administrator.⁷⁸ This individual is an elected official and oversees the valuation of all property in the county that is not specifically subject to state assessment.⁷⁹ Kentucky's Constitution prescribes that property not exempt from taxation be assessed at its fair cash value,

list/96992182/ [https://perma.cc/WD5Y-3AJ7]; see Joel Burgess, *Big changes for Asheville's River Arts District: Airbnbs, apartments, zoning*, CITIZEN TIMES (Nov. 15, 2017, 4:19 PM), <https://www.citizen-times.com/story/news/local/2017/11/15/big-changes-ashevilles-river-arts-district-airbnbs-apartments-zoning/865905001/>.

⁷¹ Boyle, *supra* note 70.

⁷² *Id.*

⁷³ See *id.*

⁷⁴ *Id.*

⁷⁵ See *id.*

⁷⁶ Isaac William Martin & Kevin Beck, *Gentrification, Property Tax Limitation, and Displacement*, 54 URB. AFF. REV. 33, 34–36 (2016).

⁷⁷ *State and Local Taxes*, U.S. DEP'T OF TREASURY, <https://www.treasury.gov/resource-center/faqs/taxes/pages/state-local.aspx> [https://perma.cc/DC28-A7H4] (last visited Feb. 13, 2019).

⁷⁸ See KY. DEPT. OF REV., UNDERSTANDING KENTUCKY PROPERTY TAX (2018) https://s3.amazonaws.com/funded.edbuild.org/public/citations/653_UnderstandingKYPropertyTax.pdf [https://perma.cc/L6C7-C7BM].

⁷⁹ *Id.* at 5.

which is determined by the price it would fetch at a fair voluntary sale.⁸⁰ Alterations to the property that would potentially affect the market value of the home will affect the assessed value of the property and will thus cause the corresponding tax bill to increase or decrease accordingly.⁸¹

Other factors that are beyond the landowner's control can also play into the alteration of the market value of their property. One of the most damaging effects of gentrification on property owners is the increased market price based on the growing popularity of their neighborhood which is linked to property being able to fetch a higher price on the open market.⁸² In this scenario, the property owner would face an increased tax bill regardless of their personal actions.⁸³ Depending on the property owner's financial position, the increased tax bill can force them to sell their property and move to another community.⁸⁴

This line of reasoning has long been a staple of community planners, however, it has recently come under fire for its simplistic conclusion relying on an untenable amount of logical assumptions to be accurate.⁸⁵ There are three essential assumptions that must be made in order for this theory to be correct: rising housing costs will correspond with rising assessed values, property tax rates will remain constant (or will not decrease), and the cost of increasing property taxes provides a sufficient incentive to compel property owners to sell.⁸⁶ Where the first two factors are commonly met in gentrifying communities, little research has been done to prove that gentrification related property tax increases provide any significant contribution to the displacement of homeowners.⁸⁷

This issue is addressed by William Martin and Kevin Beck through their analysis of 32 years' worth of data gathered from the Panel Study of Income Dynamics, a decennial Census-tract level measure of gentrification, and state-level property tax policies.⁸⁸ According to Martin and Beck's analysis, there is no evidence of displacement being disproportionally effected by property tax burdens in gentrifying communities compared to non-gentrifying areas.⁸⁹ Without providing a conclusive result, Martin and Beck hypothesize that because the typical homeowner is older, has lived on their property for a longer period of time, and have a greater economic interest in "staying put," they are more likely to bear the increased tax burden.⁹⁰ In contrast, renters in gentrifying communities are significantly more likely to be displaced because of rising property taxes.⁹¹

⁸⁰ *Id.*

⁸¹ *Id.* at 7.

⁸² Martin & Beck, *supra* note 76, at 36.

⁸³ *Id.*

⁸⁴ *Id.* at 36.

⁸⁵ *Id.* at 36–38, 54.

⁸⁶ *Id.* at 36–37.

⁸⁷ *Id.* at 55–56.

⁸⁸ *Id.* at 35.

⁸⁹ *Id.* at 54–55.

⁹⁰ *Id.*

⁹¹ *Id.* at 54.

The California legislature noticed this problem in the late 1970s and proposed a referendum that would limit taxes to initially be one-percent of the value the property was acquired at with a cap of two-percent for increases from year to year.⁹² The referendum passed and challenges to its constitutional basis were eventually decided by the Supreme Court in *Nordlinger v. Hahn*.⁹³ The court held that, despite the unequal tax burden on residents in the same neighborhoods with similar properties, the benefits of protecting longtime property owners from the effects of gentrification and an overall rapidly growing market were constitutional.⁹⁴

Though a value acquired tax assessment system may reduce the pressure to relocate that low-income property owners may feel, it is not a fix-all solution to gentrification, but it provides a relief from the direct pressure from government.

IV. PLANNING FOR A SUSTAINABLE FUTURE RATHER THAN FOR A PRESENT THAT CANNOT POSSIBLY EXIST.

Governments possess significant agency in promoting smart growth in their communities through ordinances and standardized practices. Because gentrification is an internal conflict within a community, local governments are best placed to address such concerns and to respond to the needs of their residents.⁹⁵ Local governments are limited in the scope of their authority and in rural communities where funds aren't available to implement public projects addressing gentrification, local zoning ordinances and land use laws can be effective but underutilized tools.⁹⁶ Land use law is thought to be largely reactionary rather than proactive and can be too little too late.⁹⁷ In many rural communities a lack of proactive planning can be credited to low populations and a common culture that made land use regulation unnecessary or even counterproductive to combatting declining populations.⁹⁸ By learning from other communities, however, forward-thinking rural communities can utilize the experiences of others and enact progressive ordinances.⁹⁹

In rural areas, the location and natural amenities of the region are often the greatest draw to non-natives and as such, the collective vision of their future changes with the population.¹⁰⁰ There are two main camps surrounding the usage of land in rural areas.¹⁰¹ With the rise of new amenity-driven development pushed by new residents seeking to consume the beauty of the land and derive value from its natural state, and the corresponding change in the local economy that accompanies said rise, land is valued as a commodity to be desired rather than a means from which capital

⁹² *Nordlinger v. Hahn*, 505 U.S. 1, 3–5 (1992) (upholding the described referendum because it did not violate the Equal Protection Clause of the 14th Amendment).

⁹³ *Id.* at 3–5.

⁹⁴ *Id.* at 17–18.

⁹⁵ See Godsil, *supra* note 47, at 320–21, 333.

⁹⁶ See *id.* at 333–34.

⁹⁷ Long, *supra* note 41, at 675–77.

⁹⁸ See *id.* at 703.

⁹⁹ *Id.* at 759.

¹⁰⁰ See *id.* at 683–85.

¹⁰¹ *Id.* at 683.

can be acquired.¹⁰² This mentality represents a shift away from the traditional view of land being a resource from which value could be mined through continuous agricultural use.¹⁰³ This is the more progressive of the two viewpoints as conservation of the environment and aesthetic value are championed above the production of capital.¹⁰⁴

Participants in the old agricultural economy are more likely to value the economic benefits that come with developing historically rural areas.¹⁰⁵ These residents are potentially best described as being “land rich but cash poor.”¹⁰⁶ Because of the disparity between land-rich locals with “move-ins” that possess the necessary wealth to move to the area largely due to the lifestyle and environment, the two groups often do not agree on how their communities should exist in the future.¹⁰⁷

Progressive land use policies can promote controlled growth while also allowing for long-term residents to profit from the sale of property. One such policy that can be implemented at the state level is the creation of a tax incentive for donating a portion of property in perpetuity as a conservation easement or as a non-development easement.¹⁰⁸ The statutory definition of a conservation easement varies from state to state, however, generally the federal government has defined it as “a binding contractual agreement . . . under which the landowner, permanently or during a time period specified in the agreement, agrees to conserve or restore habitat, open space, scenic, or other ecological resource values on the land covered by the easement.”¹⁰⁹

The benefits for donating such easements often come in the form of tax credits, or tax deductions for charitable giving.¹¹⁰ Because lower income citizens will have lower tax bills, if they pay anything at all, the immediate value of these tax credits will be much less than that to higher income individuals.¹¹¹ Significant costs associated with the donation of such easements can also make donations impractical for lower income land-owners despite their desire to see the land preserved. These include the immediate diminishment of the fair market value of the property due to the permanent restriction placed upon it, as well as the transaction costs, such as the appraisal value and the legal services to create the dedication.¹¹²

Some states have acknowledged the low value that such credits have to low income residents and have passed laws that allow for credits derived from

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See id.* at 683, 729.

¹⁰⁵ *Id.* at 683, 707–08.

¹⁰⁶ *Id.* at 683.

¹⁰⁷ *See Spain, supra* note 8, at 156.

¹⁰⁸ *See* Jennifer E. Krueger, Note, *Conservation Easements as a Way to Preserve Wisconsin's Farmland: Why Wisconsin Should Adopt a Transferable Tax Credit Program*, 99 MARQ. L. REV. 1073, 1075 (2016).

¹⁰⁹ 16 U.S.C. § 460nnn(4)(A) (2012).

¹¹⁰ Nancy A. McLaughlin, *Increasing the Tax Incentives for Conservation Easement Donations—A Responsible Approach*, 31 ECOLOGY L.Q. 1, 28–29 (2004).

¹¹¹ *See id.* at 39, n.134 (describing how the structure of a state tax credit in Maryland renders the credit useful to taxpayers with an annual salary of \$100,000).

¹¹² *Id.* at 24.

conservation easements to be transferred to third parties.¹¹³ Such programs allow landowners who may not be able to derive a tangible benefit from a tax credit to liquidize the credit through a sale to a third-party buyer.¹¹⁴

One example of such a program has been put into place in Virginia. The statute, authorizing the sale of tax credits derived from conservation easements, also contemplates the governmental expenses incurred with its administration and allows for the government to impose a two percent tax on such transfers that is used by the Commonwealth's Department of Taxation and Department of Conservation.¹¹⁵ This policy relieves some of the governmental burden for the administration of such easements as well as limits the potential for abusing such easements as tax shelters.¹¹⁶

Promoting conservation easements through tax credits rather than deductions also allows for governments to control the value of conservation easements granted each year, creating a safety valve for lost tax revenue and promoting competition among donors.¹¹⁷ The relationship between such easements and the prevention of gentrification is hardly direct, however, such a scheme gives rural landowners another option than the outright sale of their land to developers, and consequently eroding the aesthetic value of the property, without completely sacrificing the profit that could be derived from the property's sale.

The requirements of a conservation easement may be too stringent for some rural landowners to abide by, primarily the provision that requires the landowner to preserve or restore open or scenic space. Rather than requiring the landowner to restore their property to a more scenic and open use, the nondevelopment easement is less intrusive and has been statutorily defined by the federal government as "a binding contractual agreement . . . that will, permanently or during a time period specified in the agreement (i) prevent or restrict development on the land covered by the easement; or (ii) protect open space or viewshed."¹¹⁸ Such systems could be implemented in a similar fashion to those of conservation easements, with governments allowing the earned tax credits or deductions to be transferred to third-parties.

In much of the same vein, the promotion of "purchase development rights" can have a positive economic impact on individuals who are land rich and cash poor but also desire to see their land remain undeveloped. The primary difference between the purchase development right and the easements described above is the form of payment that the landowner would be able to receive.¹¹⁹ Where the landowner who opts to make a conservation easement would be able to receive tax credits and deductions for the value of the development right, had the landowner sold the

¹¹³ Krueger, *supra* note 108, 1075, 1092–94.

¹¹⁴ *Id.*

¹¹⁵ VA. CODE ANN. § 58.1-513 (2017).

¹¹⁶ Krueger, *supra* note 108, 1089–90, 1092–93.

¹¹⁷ *Id.* at 1095–96.

¹¹⁸ 16 U.S.C § 460nnn(4)(B) (2012).

¹¹⁹ KNOXVILLE-KNOX CNTY. PLANNING, SOME BASICS ON WHAT A TDR PROGRAM IS AND IS NOT, https://archive.knoxmpc.org/tdr/pdfs/tdr_what_is.pdf [<https://perma.cc/ZB3P-TL6X>].

development rights outright under a purchase development rights scheme, they would have received payment as if it had been a standard sale.¹²⁰

Like any other commodity, for a sale to occur there must be a corresponding market willing to pay for it, and purchase development rights are no exception. Because the promotion of open space and the preservation of natural aesthetic beauty are often valuable to a community, purchase development rights are often marketed to the same local governments that established the ordinances permitting such sales.¹²¹

Such a program has successfully been implemented in Lexington, Kentucky through The Fayette County Rural Land Management Board, Inc., a thirteen member board which serves as the agency of the Lexington Fayette County Urban County Government tasked with reviewing applications from rural landowners who desired to sell the development rights to their property.¹²² This move was designed to preserve the rolling bluegrass hills that have been used for horse farming for generations from being sold to those who wanted to develop the land in a non-agricultural way.¹²³ Thus far the board has approved the purchase of the development rights from 272 farms that span nearly 30,000 acres.¹²⁴ This method of preserving the rural character of an area is somewhat unique in that it allows for elected officials to represent the desires of parties who may want to see land developed and those that do not. This feature ensures that decisions to sell property to those outside of the community that would want to see it changed, is done so because of the community's desire to see change rather than as an act of financial desperation.

Lexington is far from alone in this field, as programs that promote the purchase of development rights have been implemented throughout the country, some of which have been paid for by grant or loan money from the federal government.¹²⁵ For the past three decades various federal funds have been channeled to purchase development rights programs through several pieces of legislation, most recently the Agricultural Act of 2014.¹²⁶ Under the Act, the Department of Agriculture is authorized to provide up to 50 percent of the fair market value of the fair market value of the conservation easement.¹²⁷ With federal funds up for grabs more than 20 states have created purchase development rights programs and more than 40 counties have done the same.¹²⁸

¹²⁰ *Id.*

¹²¹ See, e.g., LEXINGTON, KY., ORDINANCE 4-2000 § 26-1 (7), 26-8 (Jan. 13, 2000), <https://next.lexingtonky.gov/sites/default/files/2016-07/PDROrdinance.pdf> [<https://perma.cc/WEU6-29XH>].

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Purchase of Development Rights*, LEXINGTON-FAYETTE URBAN CNTY. GOV'T, <https://www.lexingtonky.gov/departments/purchase-development-rights> [<https://perma.cc/6JAE-YAET>].

¹²⁵ Jess M. Krannich, *A Modern Disaster: Agricultural Land, Urban Growth, and the Need for a Federally Organized Comprehensive Land Use Planning Model*, 16 CORNELL J. L. & PUB. POL'Y 57, 69–70 (2006).

¹²⁶ See *id.*; Agricultural Act of 2014, 16 U.S.C. § 3865b (2018).

¹²⁷ *Id.* § 3865b(b)(2)(A).

¹²⁸ Gayle Miller & Douglas Krieger, *Purchase of Development Rights: Preserving Farmland and Open Space*, 53 PLANNING COMM. J. 1, at 2 (2004), <http://plannersweb.com/wp-content/uploads/2012/08/140.pdf> [<https://perma.cc/UV2H-E8JP>].

The implementation of conservation easements, nondevelopment easements, and purchase development rights all require some degree of government spending, be it in the form of tax breaks or the direct purchase of development rights, such that the success of these programs is tied to a government's willingness to foot the bill. The same ends promoted by these systems of conservation can be accomplished through the private sector sales of "transfer development rights."¹²⁹ A system of transfer development rights involves land owners from a designated "sending" area to sell the development rights from their property to developers in a "receiving" area, thus allowing developers to build at a greater density than would have been allowed without the additional development rights.¹³⁰ As a result, the sending property is then burdened with "perpetual conservation easements attached to their property as deed restrictions at the time they sell TDRs (or at some earlier time such as at down zoning)."¹³¹ This method of preserving open space, and by extension disincentivizing widescale gentrification of rural communities, relies heavily on the existence of an overarching plan that stretches beyond the boundaries of a single local government.¹³² Though relatively expensive to set up and administer, cooperation between urban and rural governments have demonstrated the possibility of their success.¹³³

The alternative mentality in rural communities is a pro-growth, capital-driven approach that places a greater value on land as a commodity to be sold and developed in a way that would allow for the most profitable utilization.¹³⁴ This mentality allows for individuals who are land rich but cash poor to receive a maximum profit from their land, should they choose to sell. In terms of gentrification, the pro-development attitude is the razors edge on which a community must balance itself. On one hand, it allows for community members to increase their wealth, exercise their rights as property owners to the fullest extent, and individually benefit from the development. On the other, it opens the community up to cultural and economic changes that could potentially negatively impact those who either do not have the opportunity to develop their property or do not want to see it developed.

Beyond the initial economic impact that development can have for the landowners, local governments can incentivize selective growth opportunities that have a broad benefit to the community as a whole.¹³⁵ Such incentives have comprised key points to several smart growth campaigns implemented by state governments with varying degrees of success.¹³⁶

¹²⁹ See Theodore A. Feitshans, *Pdcs and Tdcs: Land Preservation Tools in a Universe of Voluntary and Compulsory Land Use Planning Tools*, 7 Drake J. Agric. L. 305, 328–29 (2002).

¹³⁰ *Id.* at 329.

¹³¹ *Id.*

¹³² See *id.* at 329–30.

¹³³ See *id.* at 329–31.

¹³⁴ Long, *supra* note 41, at 683.

¹³⁵ David Price, *7 Policies that Could Prevent Gentrification*, SHELTER FORCE (May 23, 2014), https://shelterforce.org/2014/05/23/7_policies_that_could_prevent_gentrification [<https://perma.cc/SYU6-C7WV>].

¹³⁶ See Boyle, *supra* note 71; Long, *supra* note 41, at 675–76.

The pairing of rural development strategies with urban development initiatives can also lead to beneficial outcomes for both groups.¹³⁷ For the greater part of the 1990s and the early 2000s, Maryland's Smart Growth initiative was supported by joint legislation that embodied the state's rural conservation agenda and its urban revitalization policy in a way that created a broad base of support from local legislators in both geographic areas.¹³⁸ Through this link, legislators were forced to work cooperatively to promote development that would not benefit one area to the detriment of the other.¹³⁹ This whole-state approach enabled state level officials to exert a relative amount of control over the types and location of development through the granting or denying of state funding based on whether it was located within a priority funding area, which had previously been approved and conformed with the state's smart growth initiative.¹⁴⁰

Because the conditions necessary for gentrification to take shape are so localized and the resources necessary to adequately address them are often unavailable, cooperation between governments on their various levels is crucial to the preservation of rural communities from the effects of gentrification. No one single land use approach to this problem will universally prevent the development and gentrification of rural communities, however, when used in tandem with each other, rural land owners are offered significantly more opportunities to profit from their property without sacrificing the character of their communities.

On either side of the debate, governments must be cognizant of the possibility of overstepping their authority and unduly infringing on the rights of landowners to use their property as they see fit.

CONCLUSION

This Note suggests that state and local governments work with communities to routinely gauge their residents' vision of their collective future and work to enact policies that embody that vision. The gentrification of rural communities is intertwined with their development for non-agricultural uses, namely by the efforts of non-community members, and thus can be addressed from the same perspective as the prevention of over or irresponsible development. Though gentrification involves the increased flow of capital through the community it also alters the face of it, visually and culturally. As the culture of the community evolves from one focused on the original residents to the new, the community's self-defined identity is changed, as is its culture. This can result in the promotion of a revisionist history and the loss of authenticity. At the risk of infringing on the rights of individual property owners, this Note suggests that the preservation of rural communities,

¹³⁷ See John W. Frece, *Twenty Lessons From Maryland's Smart Growth Initiative*, 6 VT. J. ENVTL. L. 106, 115–16 (2005).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 109.

specifically the preservation of undeveloped and open spaces is a necessary exercise of the states' police power.

Because rural communities are inexplicably tied to a lifestyle that values agricultural use of the land and open space, governments ought to permit their citizens the right to profit from the land in non-traditional ways that contemplate retaining their property's undeveloped character. This can be accomplished through the promotion of conservation easements that are incentivized by transferable tax credits. Such a scheme fosters competition among property owners to offer the most community advantageous usage of land while allowing them to see an immediate profit. Under such a scheme the economically motivated seller will retain the ability to sell their property for the highest value, however, they would then have an alternative to an outright sale. Such alternative to outright sales may stem the tide on development and allow low income land-owners the opportunity to maintain the character of their rural community without giving up their ability to profit from their property. Key to this scheme is the ability of landowners to sell the associated tax credits and deductions to third party buyers, as said tax incentives have little immediate value to low-income property owners. The same or relatively similar tax incentives should also be extended to nondevelopment easements due to their similar cost and effect on growth.

Governments at the state and local level, in giving citizens as many tools as possible to maintain control of their community's development should pass statutes authorizing the sale of transfer development rights on a statewide level. This recommendation is contingent on the existence of a strong comprehensive plans and zoning laws that contemplate the needs of both rural and urban communities. From the rural perspective, the transfer of development rights can provide both a source of profit derived from property as well as a method of directing development away from historically agricultural land to predetermined areas that would benefit most from higher density development than would have initially been permitted under the existing zoning ordinances. Though it may be expensive to implement, this type of program shifts much of the burden away from public coffers onto the private sector.

The use of purchase development rights, the outright sale of the development rights to a property will also result in similar outcomes. Implementing such projects allow landowners to make the choice between selling their property outright and altering their community or profiting to a lesser degree and maintaining the community's character. Funding issues for these programs can occasionally cause varying levels of success, however, with the availability of federal funds to pay for up to half the cost of the conservation easements on qualified properties, the onus to conserve can be partially shifted to state and local governments, as well as conservation organizations.

To avoid direct government promotion of gentrification, states should follow California's lead and implement a value-acquired system of property assessment as opposed to one that hinges on the fair market value of the property. Though gentrification-related increases in property tax bills have not been shown to correlate to displacement of homeowners, the displacing effect they have on renters is significant and worthy of government intervention. Due to the nature of rural

economies, renters are often the most financially vulnerable members of their communities and the worst positioned to handle the financial strain of displacement. This problem is compounded by the lack of available rental housing in many rural communities, forcing low income individuals to seek employment and housing further from their communities.

Such an approach will also likely be favored by many community members regardless of their economic position not only for its ability to reduce displacement rates but for the greater consistency in assessed values from year to year as well the potential to cut down on government spending by decreasing the need for personnel in the local tax assessor's office.

Ultimately, governments, in fulfilling their responsibilities to protect their citizens and to promote the general welfare, ought to promote smart growth that doesn't cause the displacement of low-income residents and the destruction of rural communities.